

**In The Matter Of:**

*United States of America ex rel. James R. Berkley v.  
Ocean State, LLC, et al.*

---

*Eric Thompson  
March 21, 2024*

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*Min-U-Script® with Word Index*

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1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF RHODE ISLAND  
3 CASE NO.: 1:20-cv-00538-JJM-PAS  
4  
5 UNITED STATES OF AMERICA ex rel.  
6 JAMES R. BERKLEY  
7 Plaintiff,  
8 vs.  
9 OCEAN STATE, LLC,  
10 NEW HARBOR CAPITAL FUND LP, NEW  
11 HARBOR CAPITAL FUND II LP,  
12 NEW HARBOR CAPITAL MANAGEMENT  
13 LP, BLUEPRINT TEST PREPARATION,  
14 LLC, FYZICAL ACQUISITION  
15 HOLDINGS, LLC  
16 Defendants.  
17 \_\_\_\_\_/  
18  
19 DEPOSITION OF ERIC THOMPSON  
20  
21 Taken on Behalf of the Plaintiff  
22  
23 DATE TAKEN: March 21, 2024  
24  
25 TIME: 9:07 a.m.  
26  
27 REPORTED BY: SHARON F. BUTLER  
28 Court Reporter  
29 Notary Public  
30 State of Florida at Large  
31  
32 PLACE: The Westin Sarasota  
33 100 Marina View Drive  
34 Sarasota, Florida 34236  
35

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22  
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20 [Exh 18](#) Fyzical Quarterly Update -  
21 First Quarter 2020 120 6  
22 [Exh 19](#) Fyzical Business Update  
23 Dated 4/24/20 121 6  
24 [Exh 20](#) Fyzical Document Dated 3/31/20 131 6  
25

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1 you if I addressed it to the board, it would have  
2 been sent to the full board.  
3 **Q. So if you sent this email, it would --**  
4 **A.** It would go to the nine members of the  
5 board that I went through earlier.  
6 **Q. Okay. All right. This is Exhibit 12.**  
7 **Do you recognize this document, sir?**  
8 **A.** Yes, I do.  
9 **Q. And did you draft this document?**  
10 **A.** I did.  
11 **Q. Did anyone else assist you in drafting**  
12 **this document?**  
13 **A.** Yeah. We had -- I ran it by Brian  
14 Belmont. And, also, I did seek some help from  
15 Reed Smith just to read over it. Correct.  
16 **Q. All right. But you drafted the document?**  
17 **A.** Oh, yeah. I mean, I didn't draft every  
18 single word in here, but I drafted the majority of  
19 this. Correct.  
20 **Q. Well, what did you --**  
21 **A.** -- including the Excel schedule.  
22 **Q. Okay. Sorry.**  
23 **What did you not draft?**  
24 **A.** Oh, I don't recall. I mean, I don't  
25 know, but I know I spent a ton of time on it.

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1 **Q. All right. And it's dated May 6th, 2020.**  
2 **A.** Correct.  
3 **Q. Is that when you drafted this document?**  
4 **A.** That's when the document was going out to  
5 the board.  
6 **Q. All right. When did you start drafting**  
7 **this document?**  
8 **A.** I don't -- it was probably in -- I mean,  
9 obviously, I didn't finish the document in a day,  
10 so it would be sometime in April.  
11 **Q. Was it after the PPP application?**  
12 **A.** I don't recall.  
13 **Q. So you said this was sent to the board,**  
14 **right?**  
15 **A.** Yes.  
16 **Q. Other than the board, did it go to anyone**  
17 **else?**  
18 **A.** I don't recall. I don't think there  
19 would have been a reason to, but I -- definitely  
20 it would have been sent to the board.  
21 **Q. But you just can't say one way or another**  
22 **if it went to anyone other than the board?**  
23 **A.** No. I mean, if -- I don't know if I  
24 copied someone on the email or not. I don't know.  
25 But it was drafted because I wanted to educate the

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1 board on where we were with PPP.  
2 **Q. So at the top, it says, "Regarding**  
3 **Fyzical's eligibility to receive CARES Act PPP**  
4 **funding."**  
5 **A.** Yes.  
6 **Q. And then throughout the document it**  
7 **refers to Fyzical?**  
8 **A.** Correct.  
9 **Q. Who were you referring to when you used**  
10 **the term Fyzical?**  
11 **A.** Fyzical Acquisition Holdings.  
12 **Q. All right. So this is specific to**  
13 **Fyzical Acquisition Holdings?**  
14 **A.** Correct.  
15 **Q. As opposed to some other Fyzical entity?**  
16 **A.** Correct. It's specific to that.  
17 **Q. All right. So under number 1, "Fyzical's**  
18 **eligibility to receive funding," where did you get**  
19 **the information stated here under number 1?**  
20 **A.** From -- I believe it was from the SBA  
21 guidelines. But we were getting information from  
22 a lot of different sources, because APTA was  
23 putting out a lot of stuff. There's a dental firm  
24 I follow, they put out a lot of stuff.  
25 But overall, I mean, it was -- we were

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1 swimming in information at that point.  
2 **Q. All right. And then the second**  
3 **paragraph, at the bottom of the second paragraph,**  
4 **it refers to "any business concern operating as a**  
5 **franchise." Do you see that?**  
6 **A.** Yes.  
7 **Q. How did you define -- how do you define**  
8 **the term "business concern"? Or does that mean**  
9 **Fyzical Acquisition Holdings, or something else?**  
10 **MR. WEEKS:** Objection to form. Calls for  
11 a legal conclusion.  
12 But you can answer in your own personal  
13 capacity.  
14 **BY MR. RENNER:**  
15 **Q. When you fill out this memo, you know --**  
16 **A.** Yeah.  
17 **Q. And at the time of the application, in**  
18 **your mind, how did you define the term "business**  
19 **concern"?**  
20 **MR. WEEKS:** Objection to form. This is a  
21 quote from the SBA guidance. He didn't write  
22 that.  
23 **MR. RENNER:** I'm not saying he wrote it.  
24 I'm just saying, in his mind, what does  
25 "business concern" refer to.

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1 **MR. WEEKS:** Objection to form.  
2 A. Anything that -- I would say it's  
3 anything that involves a franchise brand. So  
4 Fyzical Acquisition Holdings we consider to be the  
5 franchise brand.  
6 **BY MR. RENNER:**  
7 **Q. All right. So in your mind, is it**  
8 **accurate to say that business concern referred to,**  
9 **you know, what, all of the Fyzical entities**  
10 **underneath Fyzical Acquisition Holdings?**  
11 **MR. WEEKS:** Objection to form.  
12 A. There is -- what this is is the  
13 affiliation waiver, and it was for the franchise  
14 brand. And, yes, Fyzical Acquisition Holdings  
15 is -- did deserve the waiver underneath that  
16 definition.  
17 **BY MR. RENNER:**  
18 **Q. All right. How did you come to that**  
19 **conclusion that Fyzical Acquisition Holdings**  
20 **deserved a waiver?**  
21 A. Because that's what --  
22 **MR. WEEKS:** Objection. Objection to  
23 form.  
24 Go ahead. And I'm just going to caution  
25 you not to reveal anything that implicate

1 document here refers to an interim final rule.  
2 And if you look at [Exhibit 13](#) on the second page,  
3 at the footnote there, it refers to the section of  
4 the CARES Act here that's referenced in your memo.  
5 Did you refer to this document when  
6 preparing your memo, [Exhibit 13](#)?  
7 A. Yes. It was one of several documents  
8 that -- that was involved in drafting this  
9 document, in drafting the document that went to  
10 the board.  
11 **Q. All right. It says here, "Business**  
12 **concern operating as a franchise." Right?**  
13 A. Yes. Yes, it does.  
14 **MR. WEEKS:** Where are you pointing?  
15 **MR. RENNER:** In the memo.  
16 **MR. WEEKS:** Okay.  
17 **BY MR. RENNER:**  
18 **Q. So did you give any thought to whether or**  
19 **not Fyzical Acquisition Holdings was operating as**  
20 **a franchise as opposed to being merely a holding**  
21 **company?**  
22 A. I view it -- it is the franchise. It's  
23 the one who owns it.  
24 **Q. Did you give any thought, though, to**  
25 **whether or not, you know, a holding company -- the**

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1 conversations with counsel. You can answer in  
2 your own personal capacity if you landed at  
3 that conclusion.  
4 A. Yes. The SBA franchise identifier code  
5 is where -- I specifically found that out on the  
6 internet when I went to go search for our  
7 franchise brand.  
8 **BY MR. RENNER:**  
9 **Q. Well, that wasn't -- so that wasn't**  
10 **really my question. My question was --**  
11 **MR. RENNER:** Well, can you read back my  
12 last question, please.  
13 (Record read back.)  
14 **MR. WEEKS:** So that's the question.  
15 A. So can you state that again, please?  
16 **BY MR. RENNER:**  
17 **Q. Yeah. How did you come to the**  
18 **determination that Fyzical Acquisition Holdings**  
19 **deserved a waiver from the affiliation rules?**  
20 A. Because to me, it's pretty clear there.  
21 Operating as a franchise, Fyzical Acquisition  
22 Holdings is the business concern that's operating,  
23 and we have the SBA identifier code.  
24 **Q. All right. I'm going to show you**  
25 **[Exhibit 13](#). There's a footnote there. Well, the**

1 distinction between a holding company as opposed  
2 to an operating company, was that part of your  
3 thought process?  
4 **MR. WEEKS:** Objection to form.  
5 A. Again, I just view Fyzical Acquisition  
6 Holdings as the brand. That's even what I get  
7 audited on. I mean, that's my parent. That is  
8 Fyzical.  
9 **BY MR. RENNER:**  
10 **Q. All right. I'm going to show you**  
11 **[Exhibit 14](#). And if you could turn to page 10.**  
12 **And, again, these are my highlights in**  
13 **here, yellow highlights.**  
14 **So your memo that's [Exhibit 12](#) refers to**  
15 **Response Number 23 in the SBA Frequently Asked**  
16 **Questions. And it says what you say, "Addresses**  
17 **the eligibility of franchise operations for PPP**  
18 **loan proceeds."**  
19 A. Yes, I've read it.  
20 **Q. All right. So your memo, [Exhibit 12](#), at**  
21 **the bottom of the first page, you know, you refer**  
22 **to Response Number 23.**  
23 A. Correct.  
24 **Q. Right. And then you say, Response 23**  
25 **addresses the eligibility of franchise operations**

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Page 167

1 reviewed related to the PPP loan eligibility, how  
2 confident were you when you submitted the loan  
3 application that Fyzical was eligible to receive  
4 the loan?

5 **MR. RENNER:** Objection.

6 A. I was 100 percent confident, because I  
7 will tell you, my signature was on that document.  
8 And there is no way I would have moved forward  
9 without being extremely confident, in fact, 100  
10 percent confident of our ability and how deserving  
11 we were of PPP.

12 **MR. WEEKS:** All right. I have nothing  
13 further.

14 **MR. RENNER:** I just have a few  
15 follow-ups.

16 **REDIRECT EXAMINATION**

17 **BY MR. RENNER:**

18 **Q. Did you ever seek legal counsel regarding**  
19 **what's been called the franchise waiver?**

20 **MR. WEEKS:** Objection to form.

21 You can answer yes or no, but don't  
22 reveal anything --

23 **BY MR. RENNER:**

24 **Q. And by "you," I mean --**

25 **MR. WEEKS:** -- you talked to counsel

1 or waive?

2 **MR. WEEKS:** We will read.

3 **MR. RENNER:** Yeah, we'll need a  
4 signature.

5 **THE COURT REPORTER:** And ordering  
6 transcripts?

7 **MR. WEEKS:** Yes, please.

8 **MR. RENNER:** Yes.

9 **THE COURT REPORTER:** Who's ordering the  
10 original?

11 **MR. RENNER:** That would be me, I guess.

12 (Thereupon, this deposition was concluded at  
13 1:05 p.m. Reading and signing were not waived.)  
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Page 168

1 about.

2 **BY MR. RENNER:**

3 **Q. -- Fyzical?**

4 A. Yes.

5 **Q. Okay. You just testified regarding the**  
6 **SBA, various follow-ups about corporate structure.**  
7 **Do you remember that?**

8 A. Yes.

9 **Q. Were you saying the SBA or were you**  
10 **talking about Webster followed up?**

11 A. I don't recall the exact names on the  
12 email, but I know that Webster was involved and  
13 partnering with the SBA. I don't recall if the  
14 SBA people were on it or if it was direct to  
15 Webster. But it definitely was for the  
16 forgiveness with the SBA.

17 **Q. Are those emails in -- have they been**  
18 **produced, to your knowledge?**

19 **MR. WEEKS:** Objection to form.  
20 Foundation.

21 A. I don't know.

22 **MR. RENNER:** All right. That's all I  
23 have.

24 **MR. WEEKS:** I have nothing further.

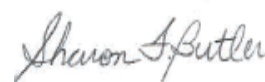
25 **THE COURT REPORTER:** Do you guys do read

1 **REPORTER'S DEPOSITION CERTIFICATE**  
2 **STATE OF FLORIDA )**  
3 **COUNTY OF SARASOTA)**

4 I, SHARON F. BUTLER, Court Reporter,  
5 certify that I was authorized to and did  
6 stenographically report the deposition of ERIC  
7 THOMPSON; (Pages 1 through 170) that a review of  
8 the transcript was requested; and that the  
9 transcript is a true and complete record of my  
10 stenographic notes.

11 I further certify that I am not a  
12 relative, employee, attorney, or counsel of  
13 any of the parties, nor am I a relative or  
14 employee of any of the parties' attorney or  
15 counsel connected with the action, nor am I  
16 financially interested in the action.

17 Dated this 2nd day of April, 2024.  
18  
19  
20  
21  
22  
23  
24  
25



SHARON F. BUTLER, Court Reporter



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CERTIFICATE OF OATH

STATE OF FLORIDA )  
COUNTY OF SARASOTA)

I, the undersigned authority, certify  
that ERIC THOMPSON appeared before me and was  
duly sworn.

WITNESS my hand and official seal this  
2nd day of April, 2024.

*Sharon F. Butler*



SHARON F. BUTLER  
Commission # HH 089253  
Expires March 30, 2025  
Bonded thru Budget Notary Services

SHARON F. BUTLER, Notary Public

SHARON F. BUTLER  
MY COMMISSION # HH 089253  
EXPIRES: MARCH 30, 2025  
Budget Notary Services

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ERRATA SHEET

Page Line Correction and reason therefor

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I, ERIC THOMPSON, do hereby state that  
the foregoing transcript is true and accurate  
except as above. Signed this \_\_\_\_ day of  
\_\_\_\_\_, 2024.

ERIC THOMPSON

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April 2, 2024

Patrick J. Weeks, Esquire  
Kirkland & Ellis LLP  
patrick.weeks@kirkland.com

In Re: United States of America vs. Ocean State, LLC,  
et al. - Deposition of Eric Thompson  
taken 3/21/24

Dear Counsel:

This letter is to advise that the transcript of  
the above-referenced deposition has been completed and  
is available for review. Please have your client  
contact Imperial Court Reporting at (941) 260-9000 to  
make arrangements to read and sign the transcript at our  
office within 30 days from the date of this letter;  
otherwise, they may sign below to waive review of this  
transcript and email this page to the email address  
below.

In the alternative, if you have purchased a copy  
of the transcript and will be handling reading and  
signing, have your client note any corrections on the  
errata sheet provided and email it to  
production@imperialcourtreporting.com to be forwarded to  
all parties for inclusion in the transcript.

Sincerely,

Imperial Court Reporting

cc: Eric Renner, Esquire

Waiver:

I, \_\_\_\_\_, hereby waive the  
reading and signing of my deposition transcript.

Witness Signature

Date

1 UNITED STATES DISTRICT COURT	1 I N D E X
2 FOR THE DISTRICT OF RHODE ISLAND	2 WITNESS EXAMINATION
3 UNITED STATES OF AMERICA )	3 JOHN ROSELLI
4 ex rel. JAMES R. )	4 BY MR. RENNER 4, 168
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6 OCEAN STATE, LLC, NEW )	7
6 HARBOR CAPITAL FUND LP, )	8
7 NEW HARBOR CAPITAL FUND )	9
7 II LP, NEW HARBOR )	10
8 CAPITAL MANAGEMENT LP, )	11 E X H I B I T S
8 BLUEPRINT TEST )	12 NUMBER MARKED FOR ID
9 PREPARATION, LLC, )	13 ROSELLI Deposition
9 FYZICAL ACQUISITION )	14 Exhibit No. 1 4
10 HOLDINGS, LLC, )	15 Exhibit No. 2 4
10 Defendants. )	16 Exhibit No. 3 4
11	17 Exhibit No. 4 4
12 The CONFIDENTIAL DEPOSITION of JOHN ROSELLI,	18 Exhibit No. 5 4
13 called for examination pursuant to the Rules of	19 Exhibit No. 6 4
14 Civil Procedure for the United States District	20 Exhibit No. 7 4
15 Courts pertaining to the taking of depositions,	21 Exhibit No. 8 4
16 taken before MARY KAY ANDRIOPOULOS, Certified	22 Exhibit No. 9 4
17 Shorthand Reporter in the State of Illinois, at	23 Exhibit No. 10 (withdrawn) 4
18 300 North LaSalle Street, Illinois, on	24 Exhibit No. 11 4
19 March 14, 2024, at the hour of 10:00 a.m.	25 Exhibit No. 12 4
20	26 Exhibit No. 13 4
21	27 Exhibit No. 14 4
22	28 Exhibit No. 15 4
23	29 Exhibit No. 16 4
24 REPORTED BY: MARY KAY ANDRIOPOULOS, CSR	30 Exhibit No. 17 4
25 LICENSE NO. 084-002248	31 Exhibit No. 18 4
1	32 Exhibit No. 19 4
	33 Exhibit No. 20 66
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<p>1 would not otherwise have been eligible under the</p> <p>2 affiliation rules due to New Harbor's ownership?</p> <p>3 A. Well, that would just be speculation,</p> <p>4 because we did.</p> <p>5 Like we had an SBA loan from Deerpath,</p> <p>6 and we qualified waiving the affiliation</p> <p>7 requirements, so --</p> <p>8 Q. So did you -- when I say you, I mean</p> <p>9 Ocean State -- did Ocean State undertake any</p> <p>10 analysis as to whether or not the affiliation</p> <p>11 rules would have precluded it from being</p> <p>12 eligible if the SBIC didn't apply?</p> <p>13 MR. MOORMAN: Let him finish his</p> <p>14 question.</p> <p>15 Are you done?</p> <p>16 MR. RENNER: Yes.</p> <p>17 THE WITNESS: So in the -- in the SBA</p> <p>18 loan explanations that we got from the Small</p> <p>19 Business Administration, it clearly stated in</p> <p>20 there affiliation requirements are waived if you</p> <p>21 already have credit from an SBIC accredited</p> <p>22 lender.</p> <p>23 So the affiliation waived the</p> <p>24 affiliation requirements.</p> <p>25 BY MR. RENNER:</p> <p>53</p>	<p>1 program came out in like late March, and, you</p> <p>2 know, you were applying like a week later.</p> <p>3 They had -- they had hotlines that you</p> <p>4 could call, e-mails you could send, and nobody</p> <p>5 responded to any of those. They weren't even</p> <p>6 picking up the phone.</p> <p>7 So we had to go with, you know, the</p> <p>8 legal counsel we were getting and --</p> <p>9 MR. MOORMAN: Don't say anything you</p> <p>10 talked about with lawyers.</p> <p>11 THE WITNESS: And, you know, we had to</p> <p>12 go with, you know, our banker's advice, and all</p> <p>13 the webinars we were doing, and all the other</p> <p>14 things we were doing, and it clearly stated in</p> <p>15 the Small Business Administration explanation</p> <p>16 documents that you can qualify one of two ways;</p> <p>17 you know, you have 500 or less employees and a</p> <p>18 certain amount less revenue, and in that</p> <p>19 situation you have to identify your affiliates,</p> <p>20 or if you're already SBIC qualified, you know,</p> <p>21 getting money from an SBIC qualified lender, you</p> <p>22 can waive the affiliation requirements.</p> <p>23 BY MR. RENNER:</p> <p>24 Q. All right. And so if the affiliation</p> <p>25 rules weren't waived, you'd agree that there</p> <p>55</p>
<p>1 Q. Fair enough.</p> <p>2 My question, though, is if the</p> <p>3 affiliation rules weren't waived, would you</p> <p>4 agree that Ocean State would not have been</p> <p>5 eligible for a PPP loan?</p> <p>6 A. I mean, it --</p> <p>7 MR. MOORMAN: Objection, calls for</p> <p>8 speculation, calls for a legal conclusion.</p> <p>9 THE WITNESS: So again, we specifically</p> <p>10 waived the affiliation, because we had SBA</p> <p>11 lending, so there's no reason to speculate.</p> <p>12 BY MR. RENNER:</p> <p>13 Q. Maybe I'm not asking the question the</p> <p>14 right way.</p> <p>15 Let's -- well, so is it fair to say</p> <p>16 then that because Ocean State determined that it</p> <p>17 received SBIC funding, it did not undertake any</p> <p>18 analysis as to whether or not it otherwise would</p> <p>19 have been precluded under the affiliation rules</p> <p>20 from eligibility?</p> <p>21 A. So we did quite a bit of analysis and</p> <p>22 consultation with the bankers that facilitated</p> <p>23 the loan, our CFO did a whole bunch of webinars</p> <p>24 to try to understand what was going on.</p> <p>25 You have to remember, the PPP loan</p> <p>54</p>	<p>1 would have been more than 500 employees, right,</p> <p>2 if you take into account all of the New Harbor</p> <p>3 --</p> <p>4 A. Again, I don't know why we have to</p> <p>5 speculate. That wasn't the case. They were</p> <p>6 waived.</p> <p>7 Q. I know, I mean, I know that's what</p> <p>8 you're saying, but I just want to confirm,</p> <p>9 though, that if you -- if Ocean State were to</p> <p>10 have considered the employees of Ocean State</p> <p>11 combined with the various other portfolio</p> <p>12 companies owned by New Harbor, then that would</p> <p>13 have been more than the 500 employee limit,</p> <p>14 right?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And likewise --</p> <p>17 A. And so that's why the portfolio</p> <p>18 companies we had that weren't -- that didn't</p> <p>19 have money from an SBIC lender, did not take PPP</p> <p>20 money.</p> <p>21 Q. Okay. And like for the same reason you</p> <p>22 mentioned, the revenue amount would have</p> <p>23 exceeded the revenue amount allowable --</p> <p>24 A. Yes.</p> <p>25 Q. -- for a PPP program? Okay.</p> <p>56</p>





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<p>1 MR. MOORMAN: And my objection is the</p> <p>2 same.</p> <p>3 The corporate representative is not</p> <p>4 going to articulate the basis of a legal</p> <p>5 argument its lawyers are making in a future</p> <p>6 filing in the midst of that discovery.</p> <p>7 If he wants to say he's going to rely</p> <p>8 on his lawyers, he can say he's going to rely on</p> <p>9 his lawyers.</p> <p>10 MR. RENNER: All right. So then for</p> <p>11 No. 17, you know, which continues on to Page 25,</p> <p>12 the same statement is made about further</p> <p>13 documents. I assume that the same objection</p> <p>14 applies?</p> <p>15 MR. MOORMAN: Right. Like, this is a</p> <p>16 -- we're going to file a motion for summary</p> <p>17 judgment, a directed verdict motion, there's no</p> <p>18 expectation to lay all of that out in an</p> <p>19 interrogatory.</p> <p>20 We've already provided significant</p> <p>21 detail, and certainly no expectation for a</p> <p>22 witness to testify about that, and I would add,</p> <p>23 there is considerable detail in the</p> <p>24 interrogatories already.</p> <p>25 MR. RENNER: Yeah, the point of my</p> <p>145</p>	<p>1 their lawyers.</p> <p>2 You can answer his question in your</p> <p>3 capacity as somebody who was involved in the</p> <p>4 process about what you did to -- or what</p> <p>5 provides the foundation for your reasonable</p> <p>6 belief and the lawfulness of your conduct.</p> <p>7 MR. RENNER: No, but I'm asking him as</p> <p>8 the 30(b)(6) witness.</p> <p>9 MR. MOORMAN: You can testify why from</p> <p>10 a factual point of view based on what you did at</p> <p>11 the time you had a reasonable belief that Ocean</p> <p>12 State was acting lawfully.</p> <p>13 MR. RENNER: I'm asking Ocean State.</p> <p>14 MR. MOORMAN: I just said that.</p> <p>15 THE WITNESS: I understand.</p> <p>16 MR. RENNER: You said you.</p> <p>17 MR. MOORMAN: I just said Ocean State.</p> <p>18 THE WITNESS: Yeah.</p> <p>19 MR. RENNER: No, you said you.</p> <p>20 I mean, I think we're all on the same</p> <p>21 page.</p> <p>22 THE WITNESS: Yeah, yeah.</p> <p>23 MR. RENNER: When you said you --</p> <p>24 THE WITNESS: This references Blueprint</p> <p>25 and Fyzical. I can't speak to that. I'm</p> <p>147</p>
<p>1 question is just to figure out what is the</p> <p>2 universe of factual support for that defense?</p> <p>3 MR. MOORMAN: It's in the</p> <p>4 interrogatory, and if there's more documents</p> <p>5 before the close of fact discovery, if we have</p> <p>6 more information, we'll supplement the</p> <p>7 interrogatory. It's a civil obligation to our</p> <p>8 Rule 37.</p> <p>9 BY MR. RENNER:</p> <p>10 Q. All right. So Interrogatory 18 on</p> <p>11 Page 25 asks Ocean State to state the basis for</p> <p>12 its fifth affirmative defense that relators</p> <p>13 claims are barred in whole or in part, because</p> <p>14 defendants had a reasonable belief in the</p> <p>15 lawfulness of their conduct, and in your</p> <p>16 response -- supplemental response on Page 26,</p> <p>17 among other things, it states that defendants</p> <p>18 diligently investigated the applicable laws and</p> <p>19 regulations in order to ensure the lawfulness of</p> <p>20 their conduct.</p> <p>21 So what specific laws and regulations</p> <p>22 did Ocean State investigate?</p> <p>23 MR. MOORMAN: So I'm going to caution</p> <p>24 the witness not to disclose any communications</p> <p>25 that he or anyone else at Ocean State had with</p> <p>146</p>	<p>1 talking about Ocean State.</p> <p>2 So we had the SBA detailed explanation</p> <p>3 documents of the loan program with a whole bunch</p> <p>4 of, you know, FAQs that specifically stated in</p> <p>5 -- specifically stated affiliation requirements</p> <p>6 are waived for those that already have an SBIC</p> <p>7 loan from, you know, an SBIC guaranteed lender.</p> <p>8 So we relied on that. We relied on our</p> <p>9 bank helping us. We did rely on some legal</p> <p>10 counsel and --</p> <p>11 MR. MOORMAN: Don't get into anything</p> <p>12 with --</p> <p>13 THE WITNESS: Yeah, I'm not going to --</p> <p>14 MR. MOORMAN: -- counsel. You can say</p> <p>15 you consulted with counsel.</p> <p>16 THE WITNESS: Yeah, and we consulted</p> <p>17 among the portfolio of New Harbor Capital,</p> <p>18 because everybody was looking at this, we</p> <p>19 consulted with Deerpath, and they gave us a lot</p> <p>20 of advice and counsel, because they were dealing</p> <p>21 with a lot of their portfolio companies that</p> <p>22 were dealing with this, so I'm very confident</p> <p>23 that we were operating legally.</p> <p>24 BY MR. RENNER:</p> <p>25 Q. Okay. But my question was specifically</p> <p>148</p>



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<p>1 with respect to the applicable laws and</p> <p>2 regulations that Ocean State investigated, and</p> <p>3 you mentioned the FAQs regarding affiliation?</p> <p>4 A. Yeah.</p> <p>5 Q. Other than that, any other laws and</p> <p>6 regulations?</p> <p>7 MR. MOORMAN: Again, don't answer this</p> <p>8 question to the extent that the rules and</p> <p>9 regulations were investigated by counsel you</p> <p>10 retained to assist you in this process.</p> <p>11 I also object that this question was</p> <p>12 asked and answered.</p> <p>13 He provided a full response to this</p> <p>14 question.</p> <p>15 THE WITNESS: Yeah, I told you what we</p> <p>16 did, so --</p> <p>17 BY MR. RENNER:</p> <p>18 Q. All right. So the testimony is</p> <p>19 complete on the record then?</p> <p>20 A. Yeah.</p> <p>21 Q. Okay. All right. So now I want to</p> <p>22 talk about your dealings with the plaintiff,</p> <p>23 James Berkley, and I believe you also had</p> <p>24 interactions with his wife.</p> <p>25 So this is in your personal capacity as</p> <p>149</p>	<p>1 endless huge bank account that New Harbor had</p> <p>2 that we could just tap into it, and I made it</p> <p>3 clear to him that that's not how this works.</p> <p>4 You know, they're an owner in the</p> <p>5 business, and they choose to or choose not to</p> <p>6 invest additional equity.</p> <p>7 Q. So that's what you meant by that's not</p> <p>8 how it works?</p> <p>9 A. Yes.</p> <p>10 Q. All right.</p> <p>11 A. And then he turned off -- and then he</p> <p>12 turned off our garbage collection and our</p> <p>13 utilities.</p> <p>14 Q. For nonpayment?</p> <p>15 A. Because that's what he could do.</p> <p>16 Q. Were there other conversations with Mr.</p> <p>17 Berkley?</p> <p>18 A. I mean, I think there was more than</p> <p>19 one, there was more than one e-mail, but those</p> <p>20 were the gists of the discussions.</p> <p>21 Q. And at some point did you speak to his</p> <p>22 wife, Heidi Berkley?</p> <p>23 A. I think the first discussion was with</p> <p>24 his wife.</p> <p>25 Q. What was the nature of that discussion?</p> <p>151</p>
<p>1 opposed to your 30(b) (6) capacity.</p> <p>2 A. Yeah.</p> <p>3 Q. Can you describe for me the</p> <p>4 communications you had with Mr. Berkley,</p> <p>5 whether, you know, via e-mail or orally?</p> <p>6 A. I think we might have talked on the</p> <p>7 phone a few times, and I think we exchanged</p> <p>8 e-mails a few times.</p> <p>9 Never met in person.</p> <p>10 Q. What were the nature of the telephone</p> <p>11 conversations?</p> <p>12 A. It was around our inability to pay our</p> <p>13 rent, trying to negotiate, you know, rent</p> <p>14 abatement.</p> <p>15 Q. And do you recall the subject being</p> <p>16 raised by Mr. Berkley of New Harbor Capital</p> <p>17 contributing funds to pay the rent?</p> <p>18 A. Yes.</p> <p>19 Q. All right. What can you tell me about</p> <p>20 those conversations?</p> <p>21 A. Well, I tried to explain to him that</p> <p>22 that's -- I think my exact words were that's not</p> <p>23 how it works.</p> <p>24 So, you know, he was under the</p> <p>25 impression that there was this sort of an</p> <p>150</p>	<p>1 A. It was letting them know that we were</p> <p>2 unable to pay rent, and she -- as I remember it,</p> <p>3 she was, you know, very upset about it, and said</p> <p>4 that, you know, this is -- you know, we're just</p> <p>5 a small investor, this is how we pay our -- you</p> <p>6 know, this is how we pay for our lives, like,</p> <p>7 you're going to make us go bankrupt.</p> <p>8 Q. I have marked for the record -- I don't</p> <p>9 need to question you about it -- but I have</p> <p>10 marked for the record as Exhibit 19, Ocean</p> <p>11 State's responses and objections to the 30(b) (6)</p> <p>12 notice.</p> <p>13 MR. MOORMAN: Understood.</p> <p>14 (Whereupon, a discussion was had</p> <p>15 off the record.)</p> <p>16 MR. RENNER: That's all I have.</p> <p>17 MR. MOORMAN: Okay. Can I ask some</p> <p>18 questions?</p> <p>19 It's okay if we go straight through?</p> <p>20 MR. RENNER: Yes.</p> <p>21 MR. MOORMAN: Okay. Great.</p> <p>22 EXAMINATION</p> <p>23 BY MR. MOORMAN:</p> <p>24 Q. You can put that to one side, Mr.</p> <p>25 Roselli.</p> <p>152</p>



<p>1 consult Ocean State's financial records, they</p> <p>2 would show what they show, right, I mean,</p> <p>3 they'll show, you know, financial performance in</p> <p>4 2020 versus 2019?</p> <p>5 MR. MOORMAN: You don't have to endorse</p> <p>6 a document you have not seen.</p> <p>7 If you need to see a document to answer</p> <p>8 the question, you can say that.</p> <p>9 THE WITNESS: Yeah, I guess, I would</p> <p>10 need to see the document to actually --</p> <p>11 BY MR. RENNER:</p> <p>12 Q. I'm just saying in general.</p> <p>13 A. You know, it's been a number of years</p> <p>14 since all this transpired, so it's difficult for</p> <p>15 me to say 20 -- how we did in 2020 versus '19,</p> <p>16 so I'd prefer having the document in front of me</p> <p>17 to answer that question.</p> <p>18 Q. And fair enough. I appreciate that.</p> <p>19 I'm not asking about a specific</p> <p>20 document.</p> <p>21 I'm just saying generally speaking,</p> <p>22 that Ocean State's financial records will bear</p> <p>23 out, you know, the financial performance of the</p> <p>24 company?</p> <p>25 MR. MOORMAN: Are you asking if the</p> <p>169</p>	<p>1 UNITED STATES DISTRICT COURT</p> <p>2 FOR THE DISTRICT OF RHODE ISLAND</p> <p>3 UNITED STATES OF AMERICA )</p> <p>4 ex rel. JAMES R. )</p> <p>5 BERKLEY, )</p> <p>6 Plaintiffs, )</p> <p>7 vs. ) No. 1:20-cv-00538</p> <p>8 OCEAN STATE, LLC, NEW )</p> <p>9 HARBOR CAPITAL FUND LP, )</p> <p>10 NEW HARBOR CAPITAL FUND )</p> <p>11 II LP, NEW HARBOR )</p> <p>12 CAPITAL MANAGEMENT LP, )</p> <p>13 BLUEPRINT TEST )</p> <p>14 PREPARATION, LLC, )</p> <p>15 FYZICAL ACQUISITION )</p> <p>16 HOLDINGS, LLC, )</p> <p>17 Defendants. )</p> <p>18 I, JOHN ROSELLI, being first duly sworn,</p> <p>19 on oath say that I am the deponent in the</p> <p>20 aforesaid deposition taken on March 14, 2024;</p> <p>21 that I have read the foregoing transcript of my</p> <p>22 deposition, and affix my signature to same.</p> <p>23</p> <p>24 JOHN ROSELLI</p> <p>25</p> <p>26 Subscribed and sworn to</p> <p>27 before me this day</p> <p>28 of , 2024</p> <p>29</p> <p>30 Notary Public</p> <p>171</p>
<p>1 financial records are accurate?</p> <p>2 THE WITNESS: My --</p> <p>3 MR. RENNER: Yeah, I mean, they show</p> <p>4 what they show, right?</p> <p>5 THE WITNESS: Yeah, my understanding is</p> <p>6 you have the financial documents, and they'll</p> <p>7 show what they show.</p> <p>8 MR. RENNER: That's all I'm asking.</p> <p>9 THE WITNESS: Okay.</p> <p>10 MR. MOORMAN: All right. Are you done?</p> <p>11 MR. RENNER: Done.</p> <p>12 MR. MOORMAN: All done.</p> <p>13 THE COURT REPORTER: Signature?</p> <p>14 MR. MOORMAN: Yes, please.</p> <p>15 (FURTHER DEPONENT SAITH NOT.)</p> <p>16 (Proceedings concluded at 2:42 p.m.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>170</p>	<p>1 STATE OF ILLINOIS )</p> <p>2 ) SS:</p> <p>3 COUNTY OF C O O K )</p> <p>4 I, MARY KAY ANDRIOPOULOS, CSR, a notary</p> <p>5 public within and for the County of Cook County</p> <p>6 and State of Illinois, do hereby certify that</p> <p>7 heretofore, to-wit, on March 14, 2024,</p> <p>8 personally appeared before me, at 300 North</p> <p>9 LaSalle Street, Chicago, Illinois, JOHN ROSELLI,</p> <p>10 in a cause now pending and undetermined in the</p> <p>11 United States District Court, for the District</p> <p>12 of Rhode Island, wherein UNITED STATES OF</p> <p>13 AMERICA ex rel. JAMES R. BERKLEY are the</p> <p>14 Plaintiffs, and OCEAN STATE, LLC, NEW HARBOR</p> <p>15 CAPITAL FUND LP, NEW HARBOR CAPITAL FUND II LP,</p> <p>16 NEW HARBOR CAPITAL MANAGEMENT LP, BLUEPRINT TEST</p> <p>17 PREPARATION, LLC, FYZICAL ACQUISITION HOLDINGS,</p> <p>18 LLC are the Defendants.</p> <p>19 I further certify that the said JOHN</p> <p>20 ROSELLI was first duly sworn to testify the</p> <p>21 truth, the whole truth and nothing but the truth</p> <p>22 in the cause aforesaid; that the testimony then</p> <p>23 given by said witness was reported</p> <p>24 stenographically by me in the presence of the</p> <p>25 said witness, and afterwards reduced to</p> <p>172</p>



1 typewriting by Computer-Aided Transcription, and  
2 the foregoing is a true and correct transcript  
3 of the testimony so given by said witness as  
4 aforesaid.

5 I further certify that the signature to  
6 the foregoing deposition was reserved by counsel  
7 for the respective parties and that there were  
8 present at the deposition the attorneys  
9 hereinbefore mentioned.

10 I further certify that I am not counsel  
11 for nor in any way related to the parties to  
12 this suit, nor am I in any way interested in the  
13 outcome thereof.

14 IN TESTIMONY WHEREOF: I have hereunto  
15 set my verified digital signature this 20th day  
16 of March, 2024.

17  
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20  
21 MARY KAY ANDRIOPOULOS, CSR  
22 LICENSE NO. 084502248  
23  
24  
25

173

1 McCorkle Court Reporters, Inc.  
2 200 N. LaSalle Street Suite 770  
3 Chicago, Illinois 60601-1014

4 DATE: March 20, 2024  
5 KIRKLAND & ELLIS, LLP  
6 MR. RYAN MOORMAN  
7 300 North LaSalle Street  
8 Chicago, Illinois 60654

9 IN RE: USA and BERKLEY V. OCEAN STATE, et al.  
10 COURT NUMBER: 1:20-cv-00538  
11 DATE TAKEN: MARCH 14, 2024  
12 DEPONENT: JOHN ROSELLI  
13 Mr. Moorman:  
14 Enclosed is the deposition transcript for the  
15 aforementioned deponent in the above-entitled  
16 cause. Also enclosed are additional signature  
17 pages, if applicable, and errata sheets.

18 Per your agreement to secure signature, please  
19 submit the transcript to the deponent for review  
20 and signature. All changes or corrections must  
21 be made on the errata sheets, not on the  
22 transcript itself. All errata sheets should be  
23 signed and all signature pages need to be signed  
24 and notarized.

25 After the deponent has completed the above,  
please return all signature pages and errata  
sheets to me at the above address, and I will  
handle distribution to the respective parties.  
If you have any questions, please call me at the  
phone number below.

21 Sincerely,  
22 Cynthia Alecia Court Reporter Present:  
23 Signature Department Mary Kay Andriopoulos, CSR  
24  
25 cc: All counsel of record

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